

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1957**

**No. 331**

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**ROY JONES, PETITIONER,**

**vs.**

**UNITED STATES OF AMERICA**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

**PETITION FOR CERTIORARI FILED JULY 31, 1957  
CERTIORARI GRANTED OCTOBER 14, 1957**

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[fol. A]

[Caption omitted]

[fol. 1]

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

No. 4901

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UNITED STATES OF AMERICA,

v.

ROY JONES, JAMES MCKINNEY, GRADY W. JONES.

---

INDICTMENT—Filed October 1, 1956

The Grand Jury Charges:

Count One.

On or about May 2, 1956, in the Gainesville Division of the Northern District of Georgia, Roy Jones, James McKinney and Grady W. Jones did unlawfully, willfully and knowingly have in possession and custody and under control, and did aid and abet each other and a person and persons to the Grand Jurors unknown to have in possession and custody and under control, a still and distilling apparatus for the production of spirituous liquors set up without having the same registered as required by law, in violation of Section 5601, Title 26, U.S.C.

Count Two.

And the Grand Jurors aforesaid do further charge that at the time and place aforesaid the defendants aforesaid did unlawfully, willfully and knowingly make and ferment, and did aid and abet each other and a person and persons [fol. 2] to the Grand Jurors unknown to make and ferment, on premises other than a distillery duly authorized according to law, approximately 2,700 gallons of mash,



the exact quantity being to your Grand Jurors unknown, fit for distillation and production of distilled spirits, in violation of Section 5216, Title 26, U.S.C.

Count Three.

And the Grand Jurors aforesaid do further charge that at the time and place aforesaid, the defendants aforesaid did unlawfully, wilfully and knowingly possess, and did aid and abet each other and a person and persons to the Grand Jurors unknown to possess certain distilled spirits, to wit: 413 gallons, the immediate containers thereof not having affixed thereto, in such manner as to be broken on opening said containers, stamps evidencing the tax or indicating compliance with the provisions of Chapter 51, United States Revenue Code of 1954, in violation of Section 5008, Title 26, U.S.C.

Count Four.

And the Grand Jurors aforesaid do further charge that at the time and place aforesaid, the defendants aforesaid did unlawfully, wilfully and knowingly work, and did aid and abet each other and a person and persons to the Grand Jurors unknown to work in a distillery for the production of, spirituous liquors, upon which no sign bearing the words "Registered Distillery" was placed and kept, as required by law, in violation of Section 5681, Title 26, U.S.C.

[fol. 3] A True Bill.

At Gainesville, Ga.

Ralph B. Hosch, Foreman, James W. Dorsey, United States Attorney, John W. Stokes, Jr., Assistant United States Attorney.

## IN UNITED STATES DISTRICT COURT

PLEA—Filed October 8, 1956

Clerk's Docket No. 4901

I, Roy Jones, defendant, having received a copy of the within Indictment and having waived arraignment, Plead not guilty thereto.

In Open Court this 8th day of Oct., 1956.

Roy Jones, Defendant, Wesley R. Asinof, Attorney for Defendant.

[File endorsement omitted]

[fol. 4] IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT, ROY JONES TO SUPPRESS EVIDENCE, ETC.—Filed October 8, 1956

Roy Jones hereby moves this Court to direct that certain property, to wit: One 6 horsepower boiler, electric fuel burner and about 15 barrels, be suppressed as evidence and ordered returned to him on the ground that on the premises of the residence of Roy Jones on #136 Highway in Dawsonville, Georgia, Route #3, said articles were unlawfully and illegally seized from said premises on May 2nd, 1955 by Federal Officer W. W. Langford and four others whose names are unknown.

Movant shows that said Federal Officers seized said property without lawful warrant or authority and without the consent of Movant.

Wesley R. Asinof, Attorney for Movant.

Personally appeared before the undersigned officer, Roy Jones, who being duly sworn deposes on oath and says that the foregoing facts are true to the best of his knowledge and belief.

Roy Jones, (X) (His mark).

Sworn to and subscribed before me, this the 8th day of September, 1956.

J. O. Ewing, Notary Public, Fulton County, Georgia.

Service omitted.

[fol. 5] IN UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA

Commissioner's Docket No. 1

Case No. 153

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UNITED STATES OF AMERICA,

v.

ROY JONES, R. F. D., Dawsonville, Ga.

---

SEARCH WARRANT—Filed May 9, 1956

*To W. W. Langford, or Any U. S. Marshal or other  
authorized officer.*

Affidavit having been made before me by W. W. Langford that he (has reason to believe) that (on the premises known as) Roy Jones, State Road No. 136 about 2½ miles NE from Dawsonville, Georgia in the Northern District of Georgia, there is now being concealed certain property, namely (here describe property) Unregistered distillery which are (here give alleged grounds for search and seizure) Unregistered distillery as there is a strong odor of Mash and a rubber and metal hose leading from said premises above described into a wooded area, same concealed by dirt and leaves and upon previous observation motors have been heard in premises and loud noises, and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the (premises) above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the (place) named for the property specified, serving this

[fol. 6] warrant and making the search (in the daytime<sup>1</sup>) and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 2 day of May, 1956.

C. Winfred Smith, U. S. Commissioner.

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF W. W. LANGFORD—Filed May 9, 1956

Before, C. Winfred Smith, United States Commissioner, Gainesville, Ga. The undersigned being duly sworn deposes and says:

That he has reason to believe that on the premises known as Roy Jones, R. F. D., Dawsonville, Georgia on the State Road No. 136 about 2½ miles N. E. of Dawsonville, Georgia in Dawson County, Georgia, in the Northern District of Georgia there is now being concealed certain property namely a Non-Registered Distillery which is [fol. 7] unregistered distillery as there has been strong odor of Mash and a rubber and metal hose leading from said premises above described into a wooded area, same concealed by dirt and leaves and upon previous observation motors have been heard in premises and loud noises, which is the facts this affidavit is based upon and the facts tending to establish the foregoing grounds for issuance of this Search Warrant.

W. W. Langford, Signature of Affiant, Criminal Investigator, Official Title.

Sworn to before me and subscribed in my presence this 2 May, 1956.

C. Winfred Smith, United States Commissioner.

<sup>1</sup> The Federal Rules of Criminal Procedure provide:

"The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C.)

[fol. 8] IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA, GAINESVILLE DIVISION

Number 4901, Criminal Action

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THE UNITED STATES OF AMERICA,

v.

ROY JONES, JAMES MCKINNEY, WILLIAM GRADY JONES.

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TRANSCRIPT OF PROCEEDINGS ON MOTION TO  
SUPPRESS EVIDENCE

Before: Honorable William Boyd Sloan, Judge, October  
8, 1956.

APPEARANCES:

For the Government: John W. Stokes, Jr., Assistant  
United States Attorney, Atlanta 3, Georgia.

For the Movant: Wesley R. Asinof, Attorney, Atlanta  
National Building, Atlanta 3, Georgia. Howard Overby,  
Attorney, Gainesville, Georgia.

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The Court: All right, the motion of Roy Jones, Motion  
to Suppress.

(The above matter having come on for hearing before  
the Judge without a jury, witnesses were sworn, rule not  
invoked, and the following proceedings were had.)

• • • • •

[fol. 17] Mr. FRANK JONES, having been sworn, testified as follows:

Direct examination.

By Mr. Asinof:

Q. State your full name, please, sir.

A. Frank Jones.

Q. Where do you live, Mr. Jones?

[fol. 18] A. I live up there above Dawsonville, close to New Bethel Church.

Q. Where is that with reference to the home of Roy Jones?

A. Well, that's about a quarter from where I live out to the house, a short walk.

Q. About a quarter of a mile?

A. Short walk.

Q. Are you related to Roy Jones?

A. Yes, he's my son.

Q. Your son. Did you have occasion on or about the 2nd day of May of this year of being in his home?

A. Yes, yes.

Q. Was that at night?

A. Yes.

Q. Were you present when Officer W. W. Langford and some other federal officers came to that home of your son?

A. Yes, sir.

Q. Who else was present in the house at the time?

A. Well, they wasn't nobody in there but one of my boys.

Q. In the house?

A. Yes.

Q. At the time the officers got there?

A. Yes.

Q. Which one of your boys was that?

A. Millard.

Q. Millard?

A. Yes.

Q. Now, where was Mrs. Roy Jones at the time?

A. She had gone to Dawsonville, her and her sister, to a little play, some kind of a play out there at school.

[fol. 19] Q. Where were you?

A. I was sitting in the house watching the television.

Q. Sitting in the house at the time the officers got there?

A. Yes watching the television.

Q. Now, then, where, at the time how did the officers gain entrance into that house?

Mr. Stokes: If Your Honor please pardon me for interrupting Mr. Asinof, but it may be possible that some of the jurors are here in the Courtroom, and I don't know whether it would not be proper to have, not have them here since this is a matter that may come before a jury at this term of Court.

The Court: All right, I will ask all the jurors please, if any of them are in the Courtroom, to please retire from the Courtroom.

By Mr. Asinof:

Q. Now, Mr. Jones, how did these officers gain entrance into this house?

A. Well, I was setting in there, and Roy's wife and her sister had been to that little play and come back, and just about the time they stopped their car I think the officers went up to the car. Well, she come on in the door in front, well, they crowded right on in behind her, two of them, or three, I wouldn't say which, but I'd say there was that many, two or three, and she told them not to come in unless they had a right, and they just kept aserouging on. Well, she pushed them back. I was setting there in four [fol. 20] foot of it. I thought about going out, but I did not get up, and she kept them pushed back a little bit, and in, I guess, three minutes, something like that the best I guess, why Mr. Woody come up, and he said, "I'm the law", says, "This is Woody," that's the first she knowed it was the law.

Q. Now, was anything—

A. And she asked them, she said, "Read your warrant, show your warrant," or "Wait until Roy comes and you can come in," and they wouldn't do it.

Q. What did they say with reference to a warrant? What was their reply about a warrant?



A. Well, I didn't hear them say nothing about it. I think Mr. Woody said he didn't have nairn, but he could write one.

Q. Said he could write one?

A. I think so, I think he said that.

Q. She did ask for a warrant, though?

A. Absolutely, two or three different times.

Q. Now, then—

A. And then told them to wait until Roy come and then they could come in.

Q. Now, where were the children all this time?

A. They was coming in the house from out of the truck, scared, come in there scared, and Lois come in—that was her sister, she was scared to death—she come in, too.

Q. Now, how did these officers—what treatment did they, these officers, how did they treat—

A. Well, they just pushed—the best I could tell, just shoved her back out of the way, and she would, she would try to keep them out, tried to keep them pushed out.

Q. And they shoved her out of the way?

[fol. 21] A. They shoved her out of the way.

Q. What about the children, did they shove the children out of the way?

A. Well, I didn't see then—no, I didn't see them shoving no children, I didn't. They come in and, after the law went on in, back through the hall, why, Roy's wife come in and says, "They've skinned my feet all over."

Q. Now, what did they find after they came in the house? What was in there?

A. Well, I suppose they found a boiler back there.

Q. Distilling equipment?

A. Yes. I didn't go back there. They went right on back the hall.

Q. What room was this in? What room of the house?

A. Well, second room.

Q. Second room?

A. Yes, from where I was sitting.

Q. How many windows are there in that room?

A. Well, I wouldn't know; about two, I guess.

Q. Two? Were the shades down?

A. Well, I couldn't tell you.



Q. Do you know whether or not there was any way that that boiler could have been seen from the outside of the house?

A. I couldn't tell you.

Q. But you and your son, I believe you said, were there?

A. Yes, sir.

Mr. Asinof: He's with you.

[fol. 22] Cross examination.

By Mr. Stokes:

Q. How long had that still been in the house?

A. I couldn't tell you that.

Q. You live right across the street from the house, don't you?

A. Yes, sir, about a quarter, a short quarter, I guess.

Q. And this same night, just before the officers came in there, a short time before, a truck came from your yard into the, over to this house where the distillery was located, didn't it?

A. I did not see it.

Q. How long had you been in the house when this thing happened?

A. Well, I had been in there ever since dark.

Q. You say you don't know how long that still had been there?

A. No, sir.

Q. It wasn't just a boiler, was it?

A. I couldn't tell you that.

Q. Didn't they have the hose running from the spigot in the kitchen all the way up to the attic for water supply for it?

A. I couldn't tell you.

Q. Didn't they have a big electric blower and oil burner downstairs to run it?

A. I just couldn't tell you about that. I don't know anything about that.

Q. Isn't it true that just a short time before the officers came in there was some three or four hundred gallons of whiskey loaded from the back door of that house into a

truck, this very house you were sitting in?

[fol. 23] A. Not to my knowing. If there was air drap loaded there, I didn't know it, nor I didn't see it.

Q. How long had you been there, to your best judgment?

A. Well, I had got there a little 'fore dark, I guess, about dark.

Q. Well, in minutes and hours, about how long had you been there? Had you been—how long had you been there when the officers came?

A. Well, they come about nine o'clock.

Q. You had been there two or three hours?

A. Well, I had been there that long, from dark until about nine o'clock.

Q. Who else wa in the house?

A. My boy.

Q. What is his name?

A. Millard.

Q. And who else?

A. Well, that was all. Well, Grady, that was another boy, he was in there.

Q. How long was Grady there?

A. Well, I guess he was there all the time. He enerally (sic) eats his supper out there, and stayed around there.

Q. Grady got arrested outside, didn't he?

A. Yes.

Q. In fact, he just came from the house when he got arrested, hadn't he?

A. Well, this truck that stalled down there at the highway, just stalled down there and stayed there for ten minutes or longer, I could hear it, I was in the room, I didn't go out, and he went down there to help out, and then the law raided it while he was down there, had been spinning there ten minutes or longer. If it had got up there, why the law wouldn't have got no liquor.

[fol. 24] Q. That truck which was stalled there came from right in back of this house you were sitting in?

A. Well, did I didn't know it, and I didn't hear it, and I was in the house, looks like I would have heard it.

Q. How do you know the truck was stalled?

A. I heard it.

Q. But you didn't hear it when it was right up next to the door of the house?

A. No. No, sir. You take a truck stalled, trying to pull, and he backed up there, he stayed there for ten minutes.

Q. Where does Grady live, or where did he sleep, live at that time?

A. He lived with me.

Q. I see.

Mr. Stokes: No further questions.

Mr. Asinof: Come down.

(Whereupon the witness was excused from the stand.)

---

[fol. 32] Mr. ROY JONES, having been sworn, testified as follows:

Direct examination.

By Mr. Asinof:

Q. Is your name Roy Jones?

A. Yes, sir.

Q. You are the defendant in this case?

A. That's right.

Q. Mr. Jones, where do you live?

A. I live about four mile, or four and half from Dawsonville.

Q. Is that the same place that you were living on or about May 2 of this year?

A. That's right.

Q. You live there with your wife and children?

A. That's right.

Q. And you did at that time?

A. That's right.

Q. Now, sometime during the night of May 2, what time did you arrive home?

A. I believe that it was right around ten o'clock.

Q. About ten o'clock?

A. That's right, might have been just a few minutes 'til, or a few minutes after. I wouldn't be positive.

Q. Who was there at the time you arrived?

A. Well, Mr. Woody was, Mr. Blizzard, James Hollingsworth, and another one, I don't know just what his name was.

[fol. 33] Q. Are they federal officers?

A. They said they was, which I knowed Woody was. They said they was.

Q. You knew at least one of them was federal officer?

A. That's right.

Q. Of the Alcohol Tax Unit?

A. That's right.

Q. Now, when you got there, was your wife there?

A. Yes, sir.

Q. How about your children?

A. They was there.

Q. How about your father?

A. He was there.

Q. Anybody else?

A. Two brothers. James McKinney, he was there.

Q. Now, what articles, or equipment were seized in that house that night by those officers?

A. Well, they cut a complete still.

Q. Where was that still located?

A. The boiler and the burner was downstairs.

Q. In the house?

A. In the house.

Q. Which room?

A. Well, as you go in—it was the second room, go right down the hall and the second room on the left—the boiler and the burner was in there—

Q. Now, could any of that equipment be seen from the outside of the house?

A. No, sir, absolutely not.

Q. Do you know whether or not any of these officers had a warrant to search the house?

A. They didn't show me one when I came in, and I asked Mr. Woody, I said, "Why didn't you get one, Mr. Woody?" I said, "I thought you had to have a search warrant." He [fol. 34] says, "No," (sic) says, "We don't have to have one."

Q. Yes, sir. Now, then, was anyone under arrest at the time that you got there?

A. Yes, sir.

Q. Who was that?

A. Grady Jones, James McKinney.

Q. Grady Jones, that your brother?

A. That's right.

Q. And James McKinney?

A. Yes, sir.

Q. Do you know whether or not—you don't know whether they were in the house or not at the time of the arrest, do you?

A. No, sir. They said they wasn't.

Q. You mean the officers said they weren't?

A. No, the boys told me about them a-catching them.

Q. Now, describe to the Court just what equipment it was that was in that—that was seized?

A. Well, there was a boiler. Most everybody in here, I imagine, knows what one is, and an electric fuel burner, and those hogs, I believe there was six of them upstairs, and there was five four foot hogs, or vats, if you want to call them vats, upstairs, and there weren't any way that they could have seed any of it without going up there.

Q. I see. Now, then, did they seize that, or destroy it, or take it with them, or what?

A. They took part of it with them, and destroyed the rest.

Q. Destroyed it right there in the house, or take it outside?

A. They destroyed everything in the house rather than the beer, or the mash, whichever one you might want to [fol. 35] call it. They pumped a good deal of hit out and left the rest.

Q. What time of day was it when you left the house that day?

A. I left there around six o'clock.

Q. Was it light or dark at that time?

A. It was light.

Q. It was light?

A. It was before dark.

Q. Did you see any of those officers there at that time?

A. No, sir, I did not.

Q. Didn't notice any signs of them being there at that time?

A. No, sir.

Mr. Asinof: He's with you.

Cross examination.

By Mr. Stokes:

Q. Do you claim that was your distillery?

A. It was.

Q. How long had it been there?

A. I guess it had been there a week or a little better.

Q. Now, then, the hogsheds were up on the second floor?

A. They was upstairs.

Q. And they were all full of mash, weren't they?

A. That's right.

Q. When the officers came in there. Some of it spent mash, and some fermenting mash?

A. It was all mash.

[fol. 36] Q. Yes. How did they pump any of the mash out? What was the arrangement for that? Where did it go when you pulled it out?

A. It went down the branch.

Q. Now, was there a hose or pipe?

A. There was a hose.

Q. How far away did it go to the branch? About how far from the house?

A. I would say three hundred feet.

Q. Just three hundred feet?

A. I would say that, which it might have been a little further, or it might not have been that far.

Q. Now, then, before this night the officers came there, mash had been pumped through that hose, hadn't it?

A. There had been, yes, sir.

Q. Spent mash that had been cooked; in other words, after you finished cooking it. It wouldn't be pumped out until it had been used up?

A. That's right.

Q. Where was the boiler located, downstairs on the first floor?



A. That's right.

Q. It had an electric blower to—for the fuel oil to fire—

A. Yes, sir.

Q. And was there an electric switch, or some automatic switch that cut it on and off, or not?

A. It didn't have no automatic switch; it just had a switch.

Q. That made quite a lot of noise when it was running, didn't it?

A. No, sir, not the way it was rigged up.

Q. I see.

A. It was rigged up right.

[fol. 37] Q. Did you rig it up?

A. That's right.

Q. The whiskey that was in that truck that was caught there, did that come from that still?

A. No, sir.

Q. You know where it came from?

A. No, sir.

Q. Grady Jones your brother?

A. Yes, sir.

Q. He lives across the road from you, or did at that time?

A. Yes, sir.

Q. Is that right? How long before the officers came in there had the still been run? When was the last time?

A. The still hadn't been run in two days, for what it was run. I run myself.

Q. Two days before the officers came there?

A. That's right.

Q. How long after you ran it did you wait to pump the mash out? Right afterward, or the next day?

A. I didn't.—I didn't pump any mash out.

Q. It would flow out when you poured it in the pipe?

A. That's right, when I wanted it to do that, it would.

Q. And on the run you had made before these officers came there, when did you get rid of the mash? The same day or the day after you made the run?

A. The same day.

Mr. Stokes: No further questions.

[fol. 38] Mr. Asinof: That is all. Come down.

(Whereupon the witness was excused from the stand.)

Mr. Asinof: Movant rests, Your Honor.  
The Court: Proceed for the Government.

MR. H. L. EIDSON, having been sworn, testified as follows:

Direct examination.

By Mr. Stokes:

Q. Mr. Eidson, did you take part in the investigation involving a search and seizure of a non-registered distillery at the residence of Mr. Roy Jones on May 2, 1956?

A. I did.

Q. Had you been to that house, or to the area around it previous to that day, or within the past few days previous to that date, let us say?

A. I had been to the area.

Q. All right. What date did you first go to that area?

A. April 30, '56.

Q. Where did you go with reference to this house, and what did you do and see on April 30?

A. Well, on April 30 I went with other investigators by car, and parked near a church just above the home of [fol. 39] Roy Jones, and I got out and walked to the rear of this residence, traveling from west to east, and on the east side of the house, in the hollow, I saw the mash, a mash run.

Q. How far was that from the house?

A. Well, when I first saw it, I saw it in a branch, it was running down.

Q. Saw the mash in a branch?

A. Spent mash, yes, sir.

Q. Spent mash?

A. Yes, sir.

Q. All right. And about how far was that that you first saw the mash? About how far was that point from the house?

A. I'd estimate about seventy-five yards, I guess.

Q. Did you follow that mash, or track it to see where it came from on that date or not?

A. I followed it a short distance up the hollow, until I



could see an embankment of a public road, and then turned and went back to the other officers.

Q. How far was this particular place where you saw the mash from the yard or curtilage of the defendant's house?

A. On that day?

Q. Yes, sir.

A. Well, I imagine I got within fifty yards, perhaps.

Q. Well, let me ask you whether or not there is a cleared place, or anything like that around his house, where there is any out buildings, or anything of that nature?

A. The yard itself?

Q. Yes. Was it within that, or was it outside of the yard and immediate curtilage?

A. The mash run?

[fol. 40] Q. Yes.

A. It was outside of the yard, in the hollow located to the east.

Q. All right.

By the Court:

Q. I understood you to say it was about fifty yards from the edge of the yard?

A. That is the point that I walked up the hollow, and I imagine, I didn't measure it, of course, I estimate about fifty yards from the, where the mash was to the top of the ridge where the clearing by the house was.

By Mr. Stokes:

Q. Did you make any other investigations that day, or go back at a later day?

A. Went back at a later day.

Q. All right. What date did you next go there after April 30?

A. Went back May 1.

Q. Was anyone with you on that date?

A. Yes, sir.

Q. Who was with you?

A. Investigators Langford, Evans, Blizzard, State Agent Hollingsworth.

Q. What happened? What did you do and see on the 1st?

A. Well, on that date we went to a point near the house of Roy Jones, but across the public road in a pasture, and Investigator Langford and I then went to the part where I had first seen the mash run, and went and saw where the mash was coming out of the pipe into this hollow. It was [fol. 41] running out of the hose. I went to the hollow where I first saw evidence of—

Q. Actually running out of the pipe at that time?

A. Yes, sir.

Q. Was that at the same place you had seen it before or not?

A. No, sir, I didn't go up that far on April 30.

Q. Where was that? What was it coming out of?

A. It was coming out of a hose.

Q. Where was that with reference to the defendant's house and yard?

A. I'd say from that point to the—with the clearing or the top of the ridge where his house was, the yard was, about seventy-five feet.

Q. Were there any other houses or—were there any other houses so located that the hose would have been closer to any other house? Were there any buildings in such a place that it made it difficult for you to see which house it was coming from?

A. No, sir. There are no other houses near there.

Q. All right.

By the Court:

Q. Could you tell where the hose was coming from?

A. I could tell it was coming down the ridge. Now, I didn't go to the top of that ridge.

Q. You could tell it was coming down the ridge from the direction of the house?

A. Yes. It was partially buried.

By Mr. Stokes:

Q. Were you able to see the public road from where you were standing at that time?

A. Oh, yes.

Q. Was this hose—

[fol. 42] A. The embankment of the public road, it was a fill there.

Q. The hose was leading in the direction of the Jones house or not?

A. It was from west to east, as I recall it.

Q. Did you do anything else on that date, which would be May 1?

A. Well, I went with, Investigator Langford and I then went back and joined the other officers, and we observed the, kept the residence under observation, oh, until the morning of May 2, and I, from that point I could hear sounds from the house, bumping sounds, and sounded likt (sic) a blower operating.

Q. That was on the morning of May 2?

A. No, that was on the night of May 1.

Q. Oh, excuse me.

A. And we kept it, we stayed until the morning of May 2.

Q. From what direction did the thumping sounds and noise of the blower come?

A. Well, it sounded like from the direction of the house of Jones.

Q. Did you then go back on the evening of May 2?

A. Yes, sir.

Q. What happened then?

A. Well, we arrived at the same point and kept the house under observation, and as I recall, about seven or shortly after seven o'clock of that evening, a truck—we heard a truck start up the road and come to the Jones house, and drove in the yard and around to the back, and we heard bumping sounds then, and we were just, as I recall it, commencing to move in nearer when we heard the truck start up, and we closed in, and when I got to the [fol. 43] truck the defendants McKinney and Jones were in custody of Investigator Blizzard.

Q. Where was the truck when you saw it?

A. It was in the driveway, just from the yard of Jones to the public road.

Q. Was it pointing toward the public road?

A. Yes, sir.

Q. Was there anything in it?

A. Yes, sir.

Q. What was in it?

A. It was, as I recall, sixty-eight cases of nontaxpaid whiskey.

Q. Did you then go to the house?

A. Yes, sir.

Q. Who went to the—who was the first officer to go in?

A. I don't know, I wasn't present.

Q. They were already in the house?

A. They were already there when I arrived.

Mr. Stokes: No further questions.

By the Court:

Q. What official position do you hold?

A. At present?

Q. Yes.

A. I am Administrative Officer with the Department of Agriculture, U. S.—

Q. What position did you hold at that time?

A. I was a Criminal Investigator with the Alcohol and Tobacco Tax.

Q. Were you about your official duties at this time that you have described here?

A. Yes, sir.

[fol. 44] Q. Now, you described hearing a sound of the blower. What are blowers used for, if they are used for anything, in connection with the production of whiskey?

A. Well, a blower is used for the fuel transmission to operate the boiler in this case, or in cases of other stills they are used for the same purpose.

Q. Is it commonly used in connection with the operation of illicit distilleries?

A. Quite common usage.

Q. Are they used for any other purpose generally, in homes, or buildings out in Dawson County, that you know of?

A. I don't know of any, sir.

The Court: All right.

## Cross examination.

By Mr. Asinof:

Q. Mr. Eidson, you say that the first occasion you had to inspect around these premises of that dwelling house was about April 30 of this year, is that correct?

A. April 30 this year.

Q. Was that in the daytime or at night?

A. That, as I recall, was in the daytime.

Q. In the daytime?

A. Yes.

Q. About what time?

A. I don't recall the exact time. I do recall it was shortly after lunch of that day.

Q. Was there anyone else with you at the time?

A. When I actually went to the area?

Q. I am speaking about—that's right, on the 30th day of April.

[fol. 45] A. As I said, I was with other officers, and by car we drove to a church located—to New Bethel Church, located above the Jones residence, and I got out of the car and went alone that time.

Q. What was the purpose of going there at that time?

A. Well, we had received information that Jones had had a distillery in his house, and operated a distillery before this, and that he had put another one in, and we thought we had better check.

Q. Now, that was the purpose of going there that day?

A. Yes, sir.

Q. Relying on the information that you had?

A. Yes, sir.

Q. Now, from whom did you receive this information as to—

Mr. Stokes: I will have to object to that unless—I don't know but I assume that it was a confidential source. I think I would like to ask—

Mr. Asinof: May it please Your Honor—

Mr. Stokes: —the record to show if it is.

Mr. Asinof: I think that certainly in a case of this type, where the Government is relying upon probable cause for

a search—this is a direct, one of the direct elements of probable cause, as to whether or not the informer was correct, the source of the information, whether or not the [fol. 46] information was correct, the type that it was. If this was one of the elements of probable cause that the Government relies upon, of course it would be admissible to, on cross examination, going into the contents of it. Of course, I realize that in the trial of a case that the question of information is ordinarily hearsay, and it is also irrelevant and immaterial as to what actually took place, but in this case, since the Government relies upon probable cause, and they rely upon that as an element of probable cause, it is admissible. I cite Your Honor to a case that was recently——

The Court: It isn't a question of the admissibility; it is a question of matter of the public policy of requiring a federal officer to disclose the source of confidential information, and I believe that the Courts make no distinction between trial and investigation on probable cause with respect to requiring its answer. I agree that it would be admissible in evidence——

Mr. Asinof: Yes, sir.

The Court: —but I do not think that the public policy would be served by requiring an answer. I will not require the witness to answer the question.

Mr. Asinof: Yes, sir. Then, as I understand it, just for the sake of the record, Your Honor, may I inquire of the Court as to whether or not the Court would consider the source, or consider the fact of this witness' information, of [fol. 47] confidential information as one of the elements of probable cause?

The Court: I will consider that it has not been established that the source of information was so reliable as to authorize the officers to rely upon the information.

Mr. Asinof: That was the only reason I made that——

The Court: They have the choice about that. If they do not wish to establish the source of their information, there would be nothing that would authorize the Court to find that it was such information as they would be authorized to act on.

Mr. Asinof: All right.



By Mr. Asinof:

Q. Now, Mr. Officer, that was on the 30th day of April that you went there, and I believe you said you saw some spent mash in the stream, is that right?

A. And on the ground, yes, sir.

Q. And on the ground?

A. Yes, sir.

Q. And I believe you said that was about how far from the curtilage of this dwelling?

A. Well, now, that was just an estimate, of course, I didn't measure it.

Q. Well, from your best estimate.

[fol. 48] A. From my estimate I would say about, well, now, the first point coming down the ridge, and when I hit the stream and the mash run for the first point, I'd say about seventy-five yards.

Q. About seventy-five yards?

A. That is an estimate.

Q. I see. All right. Then you say you came back the next day?

A. That's right.

Q. On the 1st day of May?

A. 1st day of May.

Q. And you again saw some signs of spent mash coming out in the same, about the same location, or where was that location?

A. Well, on April 30 I came in from the west, and circled the house and went, came in on the east side of the house, and went up a hollow. Now, on May 1, I came in from the south side, crossed the public road and came down to the, more or less head of the hollow.

Q. Now, isn't there a barn around there?

A. Yes, sir. As I recall there is a barn located, I believe to the rear.

Q. To the rear of the dwelling?

A. Slightly to the rear of the house.

Q. Where would that have been with reference to the spot where you first located this spent mash?

A. The barn, as I recall, was, is located more or less north of the residence, and where I was was on the east side.

Q. Did you investigate the barn?

A. No, sir.

Q. You didn't go in there?

A. I didn't know, I didn't go in the barn.

[fol. 49] Q. Well, actually, then, you didn't know whether this distillery was in the barn, or in the house, did you?

A. Well, I went to the east side of the house into this hollow, and on that date I didn't know, no, sir.

Q. I see. That is on the first day of May, you didn't know.

A. On April 30, that's right.

Q. Now, then, after you noticed these signs of spent mash in the stream on the 30th day of April, and you also noticed some signs on the 1st day of May, what time of day was it on the 1st day of May that you noticed these signs?

A. I don't recall the exact time. It was in the daylight, and in the afternoon.

Q. So, then, it would have been approximately, close to thirty or thirty-six hours then, before you actually went in there and raided this distillery, wasn't it?

A. We didn't raid the distillery until May 2.

Q. That's what I mean, May 2, at night?

A. Yes, sir.

Q. About nine o'clock, wasn't it?

A. That is when we actually raided.

Q. I see. Was it about nine o'clock at night?

A. The best I recall, nine or nine fifteen, I'd say.

Q. Now, then, what steps did you take from the 30th day of April, the 1st day of May, what steps did you take, yourself, to secure a search warrant to search those premises?

Mr. Stokes: Now, I object to that on the ground that we don't contend there was a search warrant, and we don't think the question of whether or not the officers tried to [fol. 50] get one would be material since it is the reasonableness of the search which is under question.

The Court: Objection overruled.

By Mr. Asinof:

Q. Did you understand the question?

A. Yes, sir.



By the Court:

Q. Did you make any effort to get a search warrant?

A. On May 1?

Q. Yes, sir.

A. As I recall, not on May 1.

By Mr. Asinof:

Q. Made no effort to get one?

A. Now, as I recall on May 1, no.

Q. Did you make any effort on April 30 to get a search warrant to search these premises?

A. Not on April 30.

Q. Did you make any effort on May 2 to get a search warrant to search those premises?

A. Yes, sir.

Q. You did make an effort?

A. I didn't, but a fellow officer did.

Q. Well, now, what effort was made, if any?

A. Well, a search warrant was obtained, a daylight search warrant.

Q. A daylight search warrant was obtained?

A. Yes, sir.

Q. From whom was this daylight search warrant obtained?

[fol. 51]. A. Well, the U. S. Commissioner, located here in Gainesville.

Q. Now, that search warrant that you had—

Mr. Asinoff: Do you have it, Mr. Stokes?

Mr. Stokes: We don't have it. We understand the U. S. Commissioner has it, has a copy of it. Woody has a copy of it at this time.

Mr. Asinof: Do you have it, Mr. Clerk? Do you have a search warrant issued in this case?

The Clerk: I don't know.— See what that is.— Is that it?

Mr. Asinof: That is it.

By Mr. Asinof:

Q. Is this the warrant that was secured?

A. As I stated, I didn't secure the search warrant.

Q. I see, but you did know there was a warrant issued to search the premises?

Mr. Asinof: If Your Honor please, could I have about three or four minutes to read this? I didn't know there was a warrant in this case.

[fol. 52] The Court: Yes, sir. We will suspend the trial of this case now, let the jurors in, and after the jury hours, we will resume the hearing.

Mr. Asinof: All right.

The Court: Go down. Let the jury come in. We will suspend here.

(Whereupon the witness was excused from the stand.)

(The hearing was resumed at 5:00 P. M. EST, and the following proceedings were had.)

The Court: All right, now, proceed with the cross examination.

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Mr. H. L. Eidson resumes stand for continued cross examination.

By Mr. Asinof:

Q. What did you say your name was again, please?

A. Eidson, Hugh Eidson, H. L.

Q. Mr. Eidson, now you don't know whether or not any further evidence was, any further effort was made by any of the other officers or yourself toward securing a search warrant to search those premises at night, do you?

A. No, sir, not to my knowledge.

Q. To your knowledge is this warrant that I—

[fol. 53] Mr. Asinoff: Let me designate this, designate it as Movant's Exhibit #1.

The Clerk: Movant's Exhibit #1 for identification is a search warrant.

(Above search warrant marked for identification only as Movant's Exhibit #1.)

By Mr. Asinof:

Q. Is it your understanding, please, sir, that Movant's Exhibit #1, consisting of a search warrant in this case is the only warrant that was issued in this case or do you have any information as to any other warrant?

A. I actually don't have, I never saw the, examined the warrant.

Q. But you have no information as to any other warrant in the case? (sic)

A. No, sir.

Mr. Asinof: That is all from this witness, if the Court please.

Mr. Stokes: No further questions from this witness.

The Court: You may go down.— Call your next witness.

(Whereupon the witness was excused from the stand.)

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[fol. 54] MR. H. E. EVANS, having been sworn, testified as follows:

Direct examination.

By Mr. Stokes:

Q. Mr. Evans, did you take part in the investigation involving the search of the premises of Roy Jones?

A. Yes, sir.

Q. On the night of May 2, 1956?

A. Yes, sir.

Q. Had you been there before that date?

A. Yes, I had been there before.

Q. Well, when were you there before?

A. I was there on the 1st, 1st of May, and I was near there at this church, but I didn't go to his home on August 30.

Q. Did you make any observations on May 1?

By the Court:

Q. You mean April 30 or August 30?

A. April 30.

Mr. Stokes: I didn't notice it.

A. Beg pardon?

By Mr. Stokes:

Q. Did you make any observations on May 1?

A. On May 1, I was across the public road from the Jones home. I didn't cross over that road at all.

Q. Well, did you see anything?

[fol. 55] A. Yes. From the position where I was I could see—well, I remember one car came in there and stayed, oh, approximately thirty, forty-five minutes, could hear voices talking, and I could hear what I believed to be the blower cutting on and off every few minutes. It was, it would just run a little while, then it would cut off. You could smell mash, could smell hot mash. You could hear people moving around the house, and occasionally could see them.

Q. Now, where were you with reference to the house, then, you say across the road?

A. I was across the road.

By the Court:

Q. Could you tell that the odor of hot mash was coming from the house?

A. I could tell it was coming from that direction, sir.

Q. Could you tell that the noise of the blower was coming from the house?

A. Yes, sir.

By Mr. Stokes:

Q. Was that all the observations you made on the 1st?

A. Yes, sir; I believe that was about all I saw.

Q. On May 2, what observations did you make prior to the time you went in the house?

A. Well, we returned to the same place across the road, and I heard this truck start about, around seven o'clock, from up the road a ways, and come into the yard of Roy Jones' home, and went out of our sight around to the back. Again I heard, listened, I didn't hear any sound of

the blower that night, however, I did hear this bumping and [fol. 56] thumping noises of heavy objects being moved; and approximately nine fifteen I heard the truck start up over in this yard. It came out around in the front yard, where I could see it, and had the lights on; started up this grade up into the public road. At that time we were moving over nearer to the house. As the truck started up on to the public road, a car came down the road from the direction of Dawsonville, and turned into the yard of this house, and the driveway—there is an entrance at both ends, both sides of the house. As that car started coming down the road, the truck seemed to back off of this grade coming into the public road, and seemed to get stuck there. It was raining—very wet. This car that turned into the yard, did not turn off the lights. The lights stayed on. A light was turned on the front porch at Roy Jones' home, and I could see a woman on there and some children, also. All this time I was moving, coming across this road, this public road, and I also heard a woman's voice from the, (sic) yelling something from this yard or the porch over there, as this truck started off again, coming up the grade on to the public road just as I got across the road, and I got into the truck and arrested James McKinney, who was driving this truck. As I came across the road, also, and across the ditch alongside the road, I saw another man on the truck standing up on the load. He disappeared from my sight as I went into the cab of the truck.

Q. Where had the truck come from? Could you see where it came from?

A. It came through the yard, came out from back of the house, Roy Jones' house, right through his yard.

Q. Did you then go to the house? Was that—excuse me a minute—did that truck have something on it?

[fol. 57] A. It had something over four hundred gallons of nontaxpaid liquor on it.

Q. Did you then go to the house?

A. Yes, sir, I did.

Q. Now, which door did you go to?

A. Well, I started to the front door, however, while I was in the cab of the truck with James McKinney, the other investigators, some of the other investigators came

and went past the truck. I got out of the truck and asked, I believe Investigator Blizzard to hold James McKinney, and I turned and ran toward the house. State Agent Hollingsworth was on the front porch at that time, and he yelled to me "He's going through the house with a gun," so I ran to the back door. At that time one of the other officers came around to the back, I am not sure who it was, and I left the back and went back to the front, went into the house there through the front door.

Q. Did you see Mrs. Jones?

A. I did.

Q. Where was she?

A. She was standing in the front door. As I came in, in the door, she was standing in the front door with her hands like this, spread from one side of the doorway to the other?

Q. Was there any of the officers in the house at that time?

A. I'm not sure whether Agent Hollingsworth was in the house at that time or not. He was right there either—I'm not sure whether he was on the porch or in the hallway.

Q. What did you do?

A. I went on in the house, into the hallway, went through into the second room on the left of the hallway, where the boiler was located.

[fol. 58] Q. Did you push or shove Mrs. Jones, or do anything like that?

A. I did not touch Mrs. Jones as I went in the house.

Q. Now then, you testified that on the 1st of May you had smelled the odor of cooking mash. Is it necessary in the operation of a distillery to cook the mash?

A. Yes, it is.

Q. And is that a necessary part of the production of liquor at a distillery?

A. It is.

Q. Is the—does it have a distinctive odor?

A. Very distinctive.

Q. You have had experience in identifying that odor with mash in the past?

A. Have smelled it many times at stills.

By the Court:

Q. Are you a federal A.T.U. Officer?

A. Yes, sir.

Q. What are your initials, Mr. Evans?

A. James H., sir.

By Mr. Stokes:

Q. Did you hear or see any cars on the night of May 1 go up toward the house, or near the house?

A. On May 1? Yes, sir, a car went into the yard and parked there.

Q. How long did it stay?

A. I think approximately half hour, or maybe forty-five minutes.

Q. Did you notice any connection between the time when you heard the sound of the blower, and the time when that car was there?

[fol. 59] A. Yes. The blower was not running while the car was there. The blower was running before the car came there, and was running after the car left, but it was not running while the car was there.

Q. Could you say what the woman shouted, that you said you heard shout? Could you understand what she said?

A. I believe it was something to this effect—"Turn off the lights",—something to that effect. I was moving at the time, and am not absolutely certain of the exact words.

Mr. Stokes: No further questions.

Cross examination.

By Mr. Asinof:

Q. Mr. Evans, you said that you—where were you standing on the 1st day of May, 1956, when you observed these various acts?

A. Across the road, across the public road in front of his home.

Q. I see. Now, you were just standing there, or sitting in your car?



A. No, sir, I wasn't even near the car. I was on the ground.

Q. You were on the ground, just standing out in the open?

A. There's trees over there. It's a wooded area.

Q. You were concealed behind the trees?

A. Right, sir.

Q. Now, then, did you go with Mr. Langford when he secured this search warrant from the Commissioner?

[fol. 60] A. I don't believe I did, sir.

Q. Where were you at the time?

A. I don't recall, sir.

Q. Well, how long did you stay there on the 1st of May?

A. Well, went there before dark, and stayed until early morning of the 2nd.

Q. I see. So you were there all night observing the place?

A. Yes, sir.

Q. Did you go there on the 30th of April?

A. I went to a point near there. I didn't go to his house.

Q. Now, then, were you there all day on the 2nd?

A. All day? No, sir.

Q. What time did you arrive there?

A. Went back in the afternoon,—I don't recall what time, during the daylight hours.

Q. During daylight hours. Now, about what time did it get dark that day?

(sic) As I recall it was, it should be around, maybe six-thirty or seven. It was a cloudy, rainy day, so it was dark a little earlier than normal.

Q. And this was about what time that you searched the premises?

A. Approximately nine fifteen.

Q. So it was about, almost three hours after dark, or after sundown?

A. Yes, sir, something like that.

Q. Now, did you, yourself, attempt to secure any search warrant?

A. No, sir.

Q. To search the premises? Was there someone on duty



watching those premises all day? I mean, someone from the federal officers present?

[fol. 61] A. Not to my knowledge.

Q. Did you keep an around the clock watch, lookout on the place?

A. Not to my knowledge, sir.

Q. How many officers were present at the time that the search was made?

A. There were five, sir.

Q. Five. How many doors to these premises were there?

A. I'm not sure. I know there are two, a front and rear door. I don't know on the sides.

Q. You are not prepared to swear there are more than two doors?

A. No, sir, I'm not.

Q. Now, you had, in other words, a sufficient number of officers present to have placed a guard at the front door and the back door, the only two doors that you knew of, while another officer could have gone and secured a warrant to search the premises?

A. Yes, sir. We had five officers present.

Q. Yes, sir. What was the reason that you did not secure a nighttime search warrant?

A. The reason that I didn't?

Q. Yes, sir.

A. Well, I wasn't in charge of the operation, first of all. Another reason, I didn't believe it was necessary in that the crime was being committed in our presence, at least I assumed we had probable cause for that.

Q. What crime did you see committed inside the house before you went inside to search the place?

A. I didn't see any crime.

Q. What crime did you say was committed in your presence?

A. The one I saw was the transporting of the whiskey out through his yard.

[fol. 62] Q. Through his yard?

A. Yes, sir.

Q. You stopped that truck, didn't you?

A. Yes, sir.

Q. You arrested the occupants of that truck, did you not?

A. Yes, sir.

Q. Neither one of the occupants of that truck fled into that house, did they?

A. No, sir.

Q. So you had no knowledge that anyone else was even in the house, had you?

A. If you mean by "knowledge", did I see anyone else inside the house, no, sir.

Q. You had no direct knowledge of your own observation that a still was actually in the house, did you?

A. Of observation, no, sir.

Q. Only what you smelled?

A. And what I had been told. What I smelled and hear; and what I had been told by the other investigators that they had seen.

Q. Over a period of a couple of days?

A. Yes, sir.

Q. Now, it had been under surveillance for how many days? Do you remember, sir?

A. Under surveillance, I would say two days, the 1st and the 2nd.

Q. When was your first knowledge that this search warrant had been secured? When did you first learn it?

A. On the 2nd.

Q. What time of day?

A. It would have been before we left Gainesville to go out there.

[fol. 63] Q. And what time did you leave Gainesville to go?

A. I don't recall, sir.

Q. Approximately.

A. I'm not sure, but I believe it would be in the afternoon.

Q. In the afternoon. Can you give us—in other words, in the afternoon was when you left Gainesville?

A. Yes, sir. I believe that is correct.

Q. You don't remember—do you have any reports on it to refresh your memory, please, sir, and see if you can tell us when you arrived out there that day?

A. No, sir, I don't have it in any statement, as to what time we left Gainesville.

Q. It was daytime, though, wasn't it?

A. Yes, sir, it was in daylight.

Q. Daylight when you first got there, wasn't it?

A. Yes, sir.

Q. And you went there with Mr. Langford?

A. With Mr. Langford and other investigators.

Q. Was it your understanding that you had the warrant at that time?

A. Yes, sir.

Q. Why didn't you then search the premises under the warrant at that time?

A. My impression of the reason not to search at that time was to complete the investigation, and see what else would happen.

Q. Even though you were authorized to do so by a warrant?

A. Yes, sir.

Mr. Asinof: That is all.

[fol. 64] Mr. Stokes: Come down.

(Whereupon the witness was excused from the stand.)

MR. G. G. HOLLINGSWORTH, being duly sworn, testified as follows:

Direct examination.

By Mr. Stokes:

Q. You Mr. George Hollingsworth?

A. Yes, sir.

Q. Are you a State Revenue Agent?

A. Yes, sir.

Q. For the State of Georgia?

A. Yes, sir.

Q. Mr. Hollingsworth, did you part, take part on May 2, with the federal officers, in this investigation involving the search of the premises of Roy Jones?

A. I did, sir.

Q. Were you present on any of the previous investigations at that place?

A. I was, sir, on May 1.

Q. What did you observe on that date?

A. On May 1, while accompanied by Investigators Langford, Eidson, Evans and Blizzard, I observed the residence of Roy Jones from a vantage point across the road, on a hillside looking down toward his home. You could see above the road, his home was in clear view, and at that time, from observation, I could smell the strong odor of mash, hot mash,—It was on May 1, and also hear the [fol. 65] blower go on and off. It worked more or less automatically, and at times it would go on, and at times it would go off. Ran very late into the night on May 1, while we were there.

Q. How late?

A. I would say it ran 'til two o'clock. I mean twelve midnight, and then 'til around two o'clock, two A. M., on May 2, sir, approximately.

Q. Did you, you were present also on May 2, in the evening, is that right?

A. I was, sir.

Q. Did you—would you just describe what you saw and did at that time?

A. We went back to the, to approximately the same place that we had been observing on May 1. Then around nine P. M., we saw this truck drive out through the yard, and I, with other officers, disappeared, went across the road. It was beginning to come up into the highway from the east driveway. There's two driveways, going in and out of his house. I went across the road, and as I came by the truck James McKinney was in the truck, and other officers disappeared around it, so I kept going toward the house, from the direction that the truck had came. I went on to the porch. Mr. Jones was at the porch, on the porch rather, and as I ran upon the porch a small boy there grabbed a shot gun and held it up more or less at port arms, and he went to the back. I hollered to Woody and Jim that he was coming to the back door with a gun, to look out. And after he went to the back door I told Mrs. Jones, I said, "Make the boy put the gun down," and she says, "I'm

not going to do it," asked for a search warrant, and I told her we didn't need a search warrant; and the kid came back toward me, and I kept telling him, "Son, don't [fol. 66] you shoot me, give me that gun," and he never would do it. I was standing in the door at that time, hadn't entered, so ever when the kid got close enough that I could get to the gun, I got to the gun, sir, got the gun from the kid.

Q. Did you push or shove anybody, Mrs. Jones or the child?

A. I don't recall, sir, if I did it was all unintentionally, I went for the gun at the time that I had a vantage point to get it.

Q. At the time you went out there, and at the time this had taken place, I will ask you whether or not, without going into contents of what they told you, had Mr. Langford and Eidson and other officers told you about the results of their prior investigations at this premises? I mean, right around this particular date?

A. Around—

Q. I mean, had they discussed with you—had you officers discussed with each other all of the things which you had found previous to this date?

A. Yes, sir.

Q. Around this house?

A. Yes, sir.

Mr. Stokes: No further questions.

Cross examination.

By Mr. Asinof:

Q. Mr. Hollingsworth, what time was it on the 2nd, May 2nd that you got out there to the Jones house?

A. It was around six thirty that we got to the point of observation, sir, I'd say six fifteen, six thirty, sir.

[fol. 67] Q. Were you with Mr. Langford at the time?

A. Yes, sir, approximately at that time.

Q. About five of you present at the time went out there together?

A. Yes, sir.

Q. Had you kept any surveillance on that house any period of time prior to that?

A. Yes, sir, on May 1, we had.

Q. How about on April 30?

A. I didn't join them on the investigation on—

Q. I see, it was your understanding there was a surveillance, though?

A. Yes, sir.

Q. Now, then, was anybody, was any officer, to your knowledge, left on those premises on the morning of the 2nd of May to observe what went on?

A. On the morning of the 2nd of May?

Q. Yes, sir.

A. No, sir. We departed, just, as I recall, around daylight, and went back out in a south direction from his home, from the point of observation. We got into the car and returned to Gainesville.

Q. In other words, you all went out there together, and you left from that place together, is that right? How many cars?

A. Yes, sir.

Q. How many cars did you use?

A. One car.

Q. Just one car. Now—Now, Mr. Hollingsworth, were you with Mr. Langford when he secured the search warrant?

A. No, sir, I was not, sir.

Q. Did you know he had one when you drove out there on the 2nd day of May?

[fol. 68] A. No, sir, I didn't. I hadn't seen the search warrant, sir. He picked me up at my residence, as I recall, as we left Gainesville, departed.

Q. Going out there, didn't you discuss the fact that you had a search warrant?

A. Yes, sir, it was discussed, sir.

Q. So that—I mean, you had knowledge of it from your conversation with Mr. Langford?

A. Yes, sir, it was implications of it. I did not see it, sir.

Q. I mean, you didn't see the warrant, but he told you he had it?

A. Well, he didn't tell me he had one. It was just in

conversation through the other officers that I got into the car, at my residence, and we departed, and went on it, yes, sir.

Q. What time did you leave, do you remember?

A. It was about six o'clock, approximately.

Q. What time did you get there? You say about six thirty?

A. Six thirty, six forty-five.

Q. About an hour before dark, wasn't it?

A. Well, it was darkness came on a little early that afternoon.

Q. What time was sundown, do you remember?

A. Sundown was around seven, seven thirty,—May—close to eight o'clock, I'd say.

Q. In other words, the sun hadn't gone down when you got there?

A. I don't think so, but it was not visible due to the overcast.

Q. You had, you would consider it in the daytime, though, wouldn't you?

A. Yes, sir, it was in the daytime, but it was near the point of darkness.

[fol. 69] Q. Now, then, why did you go ahead and search the premises right then?

A. Well, we, after (sic) we got there and the weather was bad, we observed at that point, I don't know why it wasn't served.

Q. In other words, you can't offer any explanation or reason?

A. No, sir. We observed, we were observing the house.

Q. I'm not talking about your observance, I'm talking about your authority to go in there and search?

A. No, sir. Investigator Langford was in charge of the investigation, sir.

Q. In other words, he determined, he ascertained, as far as you were concerned—

A. Yes, sir, I was only assisting—

Q. And he ascertained not to search the premises at that time?

A. Well, he was making all the decisions, sir. I was only assisting him.



Q. So then, it was good dark after you searched the premises, wasn't it?

A. Yes, sir, it was dark.

Q. It was nighttime, then, wasn't it?

A. Yes, sir, it was dark.

Mr. Asinof: Okeh, that's all.

Mr. Stokes: No further questions.

[fol. 74]

MR. W. W. LANGFORD, having been sworn, testified as follows:

Direct examination.

By Mr. Stokes:

Q. You Mr. W. W. Langford?

A. I am.

Q. Are you a Criminal Investigator with the Alcohol and Tobacco Tax Division, Treasury Department?

A. I am.

Q. Were you present at the time of the search of the premises of Roy Jones on May 2, 1956?

A. I was.

Q. Had you been there before that date?

A. I had.

Q. And were you with Mr. Eidson on April 30 and May 1?

A. I was.

Q. Would you just describe very briefly what you saw with respect to investigations around the premises, or the finding of any mash, or hose, and so forth?

[fol. 75] A. On April 30, I, along with Investigator Eidson and other officers, went to a point near the residence of Roy Jones, Dawson County, and at my request, Investigator Eidson circled through a wooded area near the premises of Roy Jones, and sometime later came back to me and informed me that he had discovered a flow of mash in a hollow on the east side of the residence of Roy Jones, and

I so advised him that we would leave at that time, and did. On May 1, during the late afternoon, I, with the other officers, went to a point near the residence of Roy Jones to observe the premises, and being on the opposite side of the public road from Roy Jones' residence; sometimes later Investigator Eidson and I went to this same hollow on the east side of Roy Jones' residence, and at that time I saw a flow of spent mash out into the hollow, and I asked Mr. Eidson to take a point and observe toward the residence, while I worked myself up the hillside going in the direction of Roy Jones' home, for the purpose of establishing the flow of that spent mash. At the time I discovered a rubber hose, some portions of it had been joined together by metal pipes, short pieces of pipe pieced together. At that time I saw the flow of spent mash coming out from this rubber hose. Some portions of it that had been busted open and come apart, there was spent mash there, and portions, the mouth from, the end of the rubber hose where I saw the spent mash flowing, that was concealed in a small trench covered over by leaves and dirt and all. This was in the wooded area near the public road, that leads in front of Roy Jones', and the hose was leading and up into the, toward the direction of Jones' home. I was some few yards from his yard at this time.

[fol. 76] Q. Was the hose underground, or above the ground?

A. Part of it was under ground and part had broken out, I guess the pressure on the hose or something, that it had come apart, and there was mash there, and as I said, where it had a direct connection up there is where the continuous flow of mash that I observed coming from.

Q. Is the, does spent mash have any different appearance, or odor from new mash, or from fermenting mash?

A. Well, yes, it does, but to describe it, that would be hard to do, but I could tell by observation, I can tell spent mash from fermenting mash.

Q. In the process of operating a distillery, is the spent mash the mash which has been distilled, and has had the liquor distilled out of it?

A. That is what we commonly call spent mash.

Q. Is here (sic) any way to achieve spent mash other than distill the liquor out of it?

A. None that I know of.

Q. All right. Then did you, is that all the observations you made on that day?

A. We, with Investigator Eidson, went back through the woods and cross the public road and joined the other officers who held position over there. At that time we kept the premises under observation during, on up until midnight of May 1, until approximately one or two o'clock on the morning of May 2, and during the course of that time I did hear a motor or fan, blower, cut off and on at intervals, and sometime during the night I saw a car coming from on the public road from in the direction of Dawsonville, Georgia, and enter into the front yard of the Jones residence, and heard talking, and stayed there some [fol. 77] thirty, forty-five minutes, possibly longer, but during the course of that time I didn't hear this motor or blower cut off and on at intervals, as I had previously heard prior to the arrival of that car, and after the departure of that vehicle I heard the motor or blower resume its operation, and also during the course of being (sic) there and waiting, I could hear noises over there at the home of Roy Jones.

Q. What kind of noises?

A. Bumping noises.

Q. Was this later, at night?

A. It was.

Q. That you heard these noises?

A. Yes, sir. As I recall, we stayed there until midnight, until approximately one A. M. on the morning of May 2, and this noise of this motor blower cut off. Some few minutes later, after we were satisfied that activity had ceased at this time, why we departed and returned to Gainesville.

Q. Did you then return later that day?

A. On May 2, I, with these officers returned to this same area across the public road, in the late afternoon. It was an overcast, threatening rain, and held our positions there. Someone had left the home, got up the public road going from in the direction of Roy Jones' residence

toward his brother and father's home, who lives up the road towards Dawsonville on the opposite side of the public road, and I did hear some conversation in regard to "Do you want to bring the truck." Sometime later, some little bit later, I saw a vehicle drive into the yard, entering his west driveway going from the front door, front porch, and on around to the rear and out of my view, and it began to rain pretty heavy, and after the rain ceased more or less, why, I saw people moving about on the north-[fol. 78] east corner of the house, by a little post, coming through a window you could see persons moving about. Sometime a few minutes later, why I began to hear noises over there like moving about, heavy pieces of equipment or something, heavy noises over there. Sometime later, why I decided we should make some advancement toward the house, and about that time the motor cranked up and came from in the rear of the house out towards the public road on the driveway on the east side of his house, coming toward the public road, at which time it appeared that the truck became stuck. They were grinding the motor and making efforts to get out, and we made the initial move. I went to the rear, ran by the truck, went to the rear. Hearing some conversation up front, I did hear State Agent Hollingsworth call to me, "Look out, he's coming with a gun to the back", and then back up, as I was satisfied he had gone back toward the front of the house, I went around the front door, and as I recall, Investigator Evans, State Agent Hollingsworth was there, Mrs. Jones, some children, and I told her who I was, and she was standing in the front door, and she mentioned a search warrant. I told her I didn't need a search warrant, and I went down through the hall and into a rear room on the left side of the hall, and there I discovered an upright boiler, electric motor and blower attached, and there were several drums, fifty-five gallon metal drums sitting up right in this room, and then there was a stairway leading up the wall into the attic of the dwelling, and I went on up there, and I believe Investigator Eidson followed me, and we went up there and made observation about what was [fol. 79] upstairs, and I later came back down and seemed to be quite a bit of conversation, and I at that time, at this

time told Mrs. Jones that, to quieten the boy down, and kind of calm down some.

Q. Was there some other parts of the distillery upstairs?

A. The stills were up there, wood barrel stills, stills, wood barrels, and metal tank type fermenters. There was a part of a wooden barrel sawed in two, what I call a slop barrel. There's a mash pump up there.

Q. Excuse me, Mr. Langford, could you see into the truck as you went by it or not?

A. I did not, no, sir.

Q. On the date that you saw the hose coming from the dirtction (sic) of Jones' house, with the mash coming through it, could you see any of the hose, or anything on his, in his yard, or could you see that? Did your observation of it carry that far?

A. My observation didn't carry that far. I had to keep myself concealed, but it was leading up the hill in the direction of his side yard, on the east side of his house, and in the position that I went up to check the flow of the spent mash, I could see that I was near the public road. I could see the bank of the public road.

Q. In the operation of a distillery, at which a blower is used, at what actual stage of the distilling process would the blower be used?

A. Well, it would vary. As I recall this particular still here would be working on a pressure guage, (sic) in other words, your steam pressure would vary the on and off of your motor to refuel it to generate more steam for the production of the liquor.

[fol. 80] Q. Well, I mean, is the heat or the burner and blower used at any time, at any other time other than when the liquor is actually being cooked out of the mash, or distilled out of it?

A. I wouldn't know any other time unless at such time perhaps they would use it in setting up a distillery to heat water to mix the commodities there to make mash. Other than that it would be used during the course of distillation.

Q. Did you obtain a search warrant earlier that day?

A. I had on May 2.

Q. And was that a warrant for a daytime search only?

A. That is correct.

Q. And was it daytime when you actually made the raid, or whatever you might call it?

A. It was nighttime.

Mr. Stokes: No further questions.

Mr. Asinof: I would like to designate this as Movant's Exhibit #2.

The Clerk: Movant's Exhibit #2 for identification, Affidavit for Search Warrant.

(Above marked for identification only as Movant's Exhibit #2.)

[fol. 81] Cross examination.

By Mr. Asinof:

Q. Mr. Langford, I show you what has been designated as Movant's Exhibit #1, being a search warrant. That the search warrant that you secured in this case?

A. This is what I believe to be the search warrant that I secured.

Q. I show you what has been designated the Movant's Exhibit #2, being an affidavit. Is that your signature on that exhibit?

A. Yes.

Q. Now, then, Mr. Langford, all of the testimony that you have given here today in this case relative to the facts upon which you believed that there was a distillery located in these premises, all of those facts were within your knowledge at the time that you appeared before the Commissioner to obtain the search warrant, were they not?

A. Would you repeat that, please? Would you repeat that question?

Q. Well, all of the facts upon which you have testified here today, that occurred up to the time that you appeared before the Commissioner to obtain this search warrant, you were in possession of all those facts at that time, and you submitted those to the Commissioner as the basis for which you obtained this warrant?

A. That is correct.

Q. Now, then, you arrived out there on the 2nd day



of May armed with this search warrant at approximately what time?

[fol. 82] A. It was late afternoon. It was an overcast day. It wasn't actually dark. It was, I guess you would (sic) say daytime, late afternoon.

Q. It was what would normally have been between the hours of sunrise and sunset, is that not correct?

A. I believe that is correct.

Q. Now, then, you waited from the time that you got out there, armed with this daytime search warrant, you waited until about nine fifteen at night, or until it was good dark before you actually made the raid?

A. That is correct.

Q. Now, you had with your (sic) four other officers, all of that time, did you not?

A. I did on May 1, and May 2.

Q. And May 2. Now, what is the reason that you did not search these premises in the daytime?

A. At that time, of my own opinion I hadn't completed my investigation.

Q. Well, now, didn't you swear before the Commissioner that you had reason to believe that on that property there was an unregistered distillery?

A. I had.

Q. Did you not swear at that time before the Commissioner, that there was a strong odor of mash, and a rubber and metal hose leading from said premises above described into a wooded area? Did you not swear to that?

A. I did, yes, sir.

Q. Did you not also swear to the Commissioner that you had previously, on previous observation motors have been heard, and loud noises?

A. Motors coming from the premises, yes, sir, noises.  
[fol. 83] Q. Did you not swear that before the Commissioner?

A. I did.

Q. Now, then, you were in possession of all of those facts, and you went before the Commissioner on that date and secured the authority from the Commissioner to make this search?

A. I did.



Q. But yet you say the reason you did not make the search was because you still wanted to investigate further?

A. I wanted to see whether other parties would be involved.

Q. Would not the investigation have been complete if you had made this search in the daytime, and had found this distillery in the house? Would your investigation at that time not have been complete?

Mr. Stokes: I believe that is argumentive; (sic) if the Court please. It may not be, but I am objecting to it.

The Court: Well, it generally is argumentive, (sic) but I don't see any particular objection to it. He can answer it, I think the answer is prtty (sic) obvious. You know what happened after he got there.

Mr. Asinof: Yes, sir.

The Court: I think that it is really just about argument, but go ahead.

[fol. 84] Mr. Asinof: All right.

Q. Well, I mean, was there any other investigation that you wanted to secure other than the fact that there was a disillery (sic) in the premises?

A. I wanted to see whether other parties might become involved in connection with this alleged violation.

Q. Umm humm.

A. And also the possibility of any seized vehicles which might play a part.

Q. All right. Then you didn't wait until Mr. Jones, himself, came home, did you?

A. I did not.

Q. Yet they were his premises?

A. That is correct.

Q. Now, then, you had four other officers, and how many doors were there that led into this house?

A. Mr. Asinof, I do recall two doors and a possible third; I do recall two.

Q. You do recall two?

A. Two and a possible third door off the kitchen; I am not positive there, but I am as to the door at the rear and the front.

Q. Umm humm. In other words, you had a sufficient

number of officers present—outside of yourself, you had a sufficient number of officers present by which you could have kept that house under surveillance at the time that you made the raid, and could have gone back and secured a search warrant to search the premises at night, did you not?

A. If I—do I follow you correct? After the seizure had been made?

[fol. 85] Q. No, before the seizure, did you not, at that time, have a sufficient number of officers by which you could have prevented anyone from coming or going, coming in or going out of those premises?

A. I don't know as I would have any right to have stopped anyone going in and out of those premises at that time, prior to the seizure of the distillery.

Q. Prior to the seizure?

A. Yes.

Q. You would not have had a right? You would not have had a right, you would not have been able to have arrested anyone coming out of those premises?

A. Had not I known there that they had violated some Internal Revenue Law.

Q. In other words, you didn't assume at that time that you even had probable cause?

A. I did assume.

Q. You did assume that?

A. Yes.

Q. And assuming that you do not think that you would have had the lawful right to arrest anyone coming out of those premises?

Mr. Stokes: I think that is getting into an argument of law.

A. I didn't say that.

Mr. Stokes: On that point he's talking about different kinds of probable cause.

[fol. 86] Mr. Asinof: I will withdraw the question.

By Mr. Asinof:

Q. Now, then, when you actually—I am speaking now of about the time that you say you saw this truck leave there, I am trying to establish this, please, sir, that you did have a sufficient number of men with you by which you could have still kept this place under observation, and could have gone back and gotten a warrant?

The Court: Mr. Asinof, there were five officers, and not over three doors.

Mr. Asinof: All right.

The Court: That answers the question.

Mr. Asinof: All right.

By Mr. Asinof:

Q. Now, then, you did not attempt to go back and get a warrant when Mrs. Jones refused you admittance, did you?

A. I did not.

Q. Mrs. Jones did ask you not to come in, did she not?

A. That is correct.

Q. Mrs. Jones asked you, did she or not ask you to wait until her husband got there?

A. I believe she did, yes.

[fol. 87] Mr. Asinof: All right, that is all.

Redirect examination.

By Mr. Stokes:

Q. How long after that did her husband come home?

A. I would say something like thirty minutes, possibly, could have been longer; about thirty minutes, the best I recall.

Q. He admitted the still was his at that time?

A. He did, talking to me on the front porch he told me it was his still.

Mr. Stokes: No further questions.

Mr. Asinof: Let me ask him—

# Recross examination.

By Mr. Asinof:

Q. What was the reason, please, sir, that you told Mrs. Jones that you did not need a search warrant, or didn't have one?

A. Because I thought we had sufficient evidence to go in the premises without a search warrant.

Q. You didn't exhibit this search warrant that you had to her?

A. I did not, that was a daytime search warrant.

Q. All right.

[fol. 88] The Court: All right, you may go down.

Mr. Stokes: Come down. The Government rests.

(Whereupon the witness was excused from the stand.)

The Court: Anything further now for the movant?

## OFFERS IN EVIDENCE

Mr. Asinof: May it please the Court, we would like to tender the affidavit and search warrant in this case.

The Court: Is there objection?

Mr. Stokes: Is this the affidavit you made out?

Mr. Asinof: He testified it was.

Mr. Stokes: We have no objection.

The Court: They are in evidence.

(Movant's Exhibits #1 and #2 received in evidence.)

[fol. 95]

## IN UNITED STATES DISTRICT COURT

### ORDER AND FINDINGS OF FACT OVERRULING

MOTION TO SUPPRESS—October 11, 1956

Roy Jones has filed a motion in this Court to direct that certain property, to-wit: One 6 horsepower boiler, [fol. 96] electric fuel burner and about 15 barrels, be

suppressed as evidence and ordered returned to him on the ground that on the premises of the residence of Roy Jones on No. 136 Highway in Dawsonville, Georgia, Route 3, said articles were unlawfully and illegally seized from said premises on May 2, 1956, by federal officer W. W. Langford and four others whose names are unknown:

The matter came on for a hearing before the Court; evidence for both parties was heard; memoranda of authority submitted and after due consideration the Court makes the following:

#### Findings of Fact

On April 30, 1956, the federal investigators of the Alcohol & Tobacco Tax Unit of the Internal Revenue Department received information that Roy Jones was operating an illicit distillery in his home in Dawson County, Georgia. The Government refused to reveal the source of this information and the Court cannot determine that such source was reliable; however, the defendant, Roy Jones, had previously been found to be operating an illicit distillery in his home and the federal officers knew of this fact and they did credit the information and on that date made an investigation near the home of Roy Jones.

In a hollow to the rear of Roy Jones' house, the officers found spent mash flowing down a branch and upon investigation discovered that it was running from a concealed rubber hose which, upon being traced, led in the direction of the defendant, Roy Jones' home, tracing said hose to [fol. 97] within about 75 yards of his home. On the following day, the federal and state officers placed themselves across the public highway from Roy Jones' home, concealing themselves in a woods to where they had plain view of the defendant, Roy Jones' house and while there they heard the noise of a blower burner, this blower burner being of the type generally used in Dawson County, Georgia, to heat illicit distilleries, no other use for such a blower burner being known in said county. The officers also smelled the odor of hot mash coming from the direction of the house and they kept the house under surveillance until after 2:00 o'clock in the morning of May 2 and during this time they

heard much activity, the moving of heavy objects about, inside the house, with the blower burner operating as late as 2:00 o'clock A. M.

During the watch over Roy Jones' house, the officers observed a motor vehicle go into the yard of the residence and during the stay of the vehicle the blower burner did not run but after the vehicle left, the sound of the blower burner was again heard.

Shortly after 2:00 A. M., on May 2, 1956, the officers left their post of observation and returned to Gainesville and during the day of May 2, 1956, federal officer Woody W. Langford went before United States Commissioner in Gainesville, Georgia, and obtained a daylight search warrant to search the dwelling and premises of the defendant, Roy Jones; Langford at that time making affidavit before the United States Commissioner which stated in substance what the officers had discovered and asserted the belief that there was an illicit distillery in the home of Roy Jones. [fol. 98] Late in the afternoon the officers returned to their post of observation, near the home of Roy Jones, and desiring to seize any vehicles engaged in removing the illicit liquors they did not immediately execute the daylight search warrant but waited for some vehicle to arrive. Since no vehicle came to the dwelling until after dark, they did not execute the daylight search warrant but remained on watch until after dark and until about 9:00 o'clock P. M. About 9:00 P. M. some person left the residence of Roy Jones and went up the road toward the home of Frank Jones, the father of Roy Jones, and where Millard and Grady Jones, brothers of Roy Jones, lived and at that time the officers over heard a conversation when it was asked of some one in Roy Jones' house if they were ready for the truck to be brought to the house. A short time later, a truck left the yard of the home of Roy Jones' father nearby and drove into the yard of Roy Jones' house and around into the back where the officers heard a thumping sound as though there was activity with heavy objects and shortly thereafter the truck pulled out from the rear of Roy Jones' house and started to drive into the highway but it was rainy and wet and as the truck tried to pull up the incline from the yard into the highway it became stuck and at that point the officers made the initial

move to seize the truck and raid the home of Roy Jones. They arrested James McKinney and William Grady Jones, occupants of the truck, and seized 413 gallons of non-tax-paid liquor which was loaded on the truck. About that time a car drove up into the yard of Roy Jones' house and in the car was the wife of Roy Jones with his children, and Mrs. Lois Willis, the sister of Mrs. Roy Jones and her [fol. 99] children. Mrs. Roy Jones undertook to block the doorway to keep the officers from entering the dwelling house, telling the officers to wait until her husband, Roy Jones, returned. A twelve year old son of Roy Jones obtained a shotgun and while he did not point it at the officers, he held it at port arms in what the officers considered a threatening manner and the first entry into the residence was made by State Agent Hollingsworth to secure the shotgun and take it away from the child. Mrs. Jones asked officer Woody Langford if he had a search warrant and Langford replied that he did not need one and the officers then searched the premises without a search warrant.

The house had only two or three doors and there were five officers watching the residence and it would have been possible for the officers to watch each of the doors and still send another officer for a nighttime search warrant had the officers deemed this to be necessary.

Upon a search of the premises, it was found that in a downstairs room of the house there was a complete distillery consisting in part of an upright boiler with a blower burner with which to heat it, and in the attic there was 2400 gallons of mash with hose pipes leading to the outside for the disposition of the spent mash. There were no signs posted showing it to be a registered distillery. It was fully setup and ready for operation and had been recently operated. A small quantity of non-tax-paid liquor was found in the residence also.

[fol. 100] The court finds that the facts and circumstances within the knowledge of the officers were sufficient in themselves to warrant a man of reasonable caution in the belief that an offense was being committed and therefore the Court finds that probable cause for the search existed at the time the search was made.



### Conclusions of Law

Only reasonable searches are proscribed by the Fourth Amendment. There is no precise formula for determining reasonableness. Every case must turn on its own facts and circumstances.

If the officer has no warrant, he must show probable cause.

Probable cause is reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the party is guilty of the offense with which he is charged. See *Dumbra v. United States*, 268 U. S. at page 441. The search here was not unreasonable and did not violate the Fourth Amendment because the officers had reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that Roy Jones was guilty of the offense of operating an illicit distillery in his home and this is true even though the officers had time to obtain a nighttime search warrant. See *United States v. Rabinowitz*, 339 U. S. 56 at page 66 overruling *Trupiano v. United States*, 334 U. S. 699 to the extent that the *Trupiano* case required a search warrant solely upon the basis of practicability of procuring rather [fol.101] than upon the unreasonableness of the search, stating that: "The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable."

### Judgment

The motion to suppress is overruled and denied.

This the 11 day of October, 1956.

Boyd Sloan, United States District Judge.

### IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed  
October 12, 1956

The above stated case coming on to be tried by the Court, without a jury, and upon the stipulation (sic) into

evidence at said trial of all the evidence introduced upon the hearing of the defendant's Motion to Suppress and the further stipulation into evidence of additional facts relating to the location and description of the distillery, mash and distilled spirits with which this case is concerned, the Court makes the following:

#### Findings of Fact

That, on or about May 2, 1956, in the Gainesville Division of the Northern District of Georgia, the defendant had possession, custody and control and aided and abetted his co-defendants, James McKinney, Grady W. Jones and [fol. 102] persons unknown to have possession, custody and control of a non-registered distillery set up. On said date the defendant fermented and aided and abetted the others named herein to ferment approximately 2700 gallons of mash fit for distillation at premises other than a registered distillery. At the same time and place he possessed, and aided and abetted the others named here to possess, 413 gallons of distilled spirits in containers which had no federal tax stamps on them. At the same time and place the defendant worked and aided and abetted the others named here to work at the aforesaid non-registered distillery, at which there was no sign posted bearing the words "Registered Distillery".

On the basis of these findings the Court makes the following:

#### Conclusions of Law

The defendant is guilty as charged on Counts One, Two, Three and Four of the indictment.

This the 11th day of October, 1956.

Lloyd Sloan, United States District Judge.

[fol. 103] IN UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA, GAINESVILLE DIVISION

UNITED STATES OF AMERICA,

v.

ROY JONES.

JUDGMENT AND COMMITMENT—October 24, 1956

No. 4901 Criminal Indictment in four (4) counts for violation of U. S. C., Title 26, Secs. 5601, 5216, 5008, 5681.

On this 24th day of October, 1956 came the attorney for the government and the defendant appeared in person and by counsel, Wesley R. Asinof, Esquire.

It is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of the Court of guilty, of the offenses of Violation of Internal Revenue Liquor Laws, as charged in Cts. 1, 2, 3 and 4, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years, and that he pay a fine of One Hundred and No/100 (\$100.00) Dollars on the first count and a fine of Five [fol. 104] Hundred and No/100 (\$500.00) Dollars on the second count of the indictment, but that he not stand committed for said fines.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States (sic) Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Boyd Sloan, United States District Judge.

Filed in Clerk's Office this October 24th, 1956.

The Court recommends commitment to:

F. L. Beers, Clerk. By B. G. Nash.

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT  
OF GEORGIA, GAINESVILLE DIVISION

(Title omitted)

NOTICE OF APPEAL—Filed October 24, 1956

Name and Address of Appellant:

Roy Jones, Route 3, Dawsonville, Georgia.

Name and Address of Appellant's Attorney:

Wesley R. Asinof, 419 Atlanta National Bldg. Atlanta, Georgia.

Offense:

Possessing an unregistered distillery; making and fermenting mash; possessing untax paid liquors, and working in an unregistered distillery.

[fol. 105] Concise Statement of Judgment or Order, Giving Date, and any Sentence:

3 years in custody of attorney general & 600.00 fine, not to stand committed, Oct. 24, 1956.

Name of Institution Where Now Confined, if not on Bail:

On appeal bond in the sum of \$3000.00 as fixed by order of Court.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the above stated judgment.

Dated October 24, 1956.

Wesley R. Asinof, Appellant's Attorney.

[fol. 110] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 111]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—May 14, 1957  
(omitted in printing).

[fol. 112] IN THE UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 16396

ROY JONES, Appellant,

versus

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA

OPINION—June 10, 1957

Before Borah, Rives and Brown, Circuit Judges.

Per Curiam: On a trial before the court without a jury, the appellant was convicted of knowingly having in possession an unregistered still in violation of Section 5601, Title 26, United States Code, making and fermenting mash in violation of Section 5216 of said Title, possessing 413 gallons of nontaxpaid distilled spirits in violation of Section 5008 of said Title, and of working in an unregistered distillery in violation of Section 5681 of said Title. The sole insistence on error goes to the overruling by the district court of the appellant's motion to suppress. The findings of fact made by the court after hearing the evidence are not attacked. In our opinion, those findings warranted, indeed required, the conclusions of law reached by the court and the overruling of the motion to suppress. Since such findings and conclusions have not previously been published, they are attached as an Exhibit to this opinion. The judgment is

AFFIRMED.

EXHIBIT

“(TITLE OMITTED.)

“Roy Jones has filed a motion in this Court to direct that certain property, to-wit: One 6 horsepower boiler, electric fuel burner and about 15 barrels, be suppressed

as evidence and ordered returned to him on the ground that on the premises of the residence of Roy Jones on No. 136 Highway in Dawsonville, Georgia, Route 3, said articles were unlawfully and illegally seized from said premises on May 2, 1956, by federal officer W. W. Langford and four others whose names are unknown.

"The matter came on for a hearing before the Court, evidence for both parties was heard; memoranda of authority submitted and after due consideration the Court makes the following:

[fol. 114]

"Findings of Fact.

"On April 30, 1956, the federal investigators of the Alcohol & Tobacco Tax Unit of the Internal Revenue Department received information that Roy Jones was operating an illicit distillery in his home in Dawson County, Georgia. The Government refused to reveal the source of this information and the Court cannot determine that such source was reliable; however, the defendant, Roy Jones, had previously been found to be operating an illicit distillery in his home and the federal officers knew of this fact and they did credit the information and on that date made an investigation near the home of Roy Jones.

"In a hollow to the rear of Roy Jones' house, the officers found spent mash flowing down a branch and upon investigation discovered that it was running from a concealed rubber hose which, upon being traced, led in the direction of the defendant, Roy Jones' home, tracing said hose to within about 75 yards of his home. On the following day, the federal and state officers placed themselves across the public highway from Roy Jones' home concealing themselves in a woods to where they had plain view of the defendant, Roy Jones' house and while there they heard the noise of a blower burner, this blower burner being of the type generally used in Dawson County, Georgia, to heat illicit distilleries, no other use for such a blower burner being known in said county. The officers also smelled the odor of hot mash coming from the direction of the house and they kept the house under surveillance until after 2:00 o'clock in the [fol. 115] morning of May 2 and during this time they heard

much activity, the moving of heavy objects about, inside the house, with the blower burner operating as late as 2:00 o'clock A.M.

"During the watch over Roy Jones' house, the officers observed a motor vehicle go into the yard of the residence and during the stay of the vehicle the blower burner did not run but after the vehicle left, the sound of the blower burner was again heard.

"Shortly after 2:00 A.M., on May 2, 1956, the officers left their post of observation and returned to Gainesville and during the day of May 2, 1956, federal officer Woody W. Langford went before United States Commissioner in Gainesville, Georgia, and obtained a daylight search warrant to search the dwelling and premises of the defendant, Roy Jones; Langford at that time making affidavit before the United States Commissioner which stated in substance what the officers had discovered and asserted the belief that there was an illicit distillery in the home of Roy Jones.

"Late in the afternoon the officers returned to their post of observation, near the home of Roy Jones, and desiring to seize any vehicles engaged in removing the illicit liquors they did not immediately execute the daylight search warrant but waited for some vehicle to arrive. Since no vehicle came to the dwelling until after dark, they did not execute the daylight search warrant but remained on watch until after dark and until about 9:00 o'clock P.M. About 9:00 P.M. some person left the residence of Roy Jones [fol. 116] and went up the road toward the home of Frank Jones, the father of Roy Jones, and where Millard and Grady Jones, brothers of Roy Jones, lived and at that time the officers overheard a conversation when it was asked of some one in Roy Jones' house if they were ready for the truck to be brought to the house. A short time later, a truck left the yard of the home of Roy Jones' father nearby and drove into the yard of Roy Jones' house and around into the back where the officers heard a thumping sound as though there was activity with heavy objects and shortly thereafter the truck pulled out from the rear of Roy Jones' house and started to drive into the highway but it was rainy and wet and as the truck tried to pull up the incline from the yard into the highway it became stuck



and at that point the officers made the initial move to seize the truck and raid the home of Roy Jones. They arrested James McKinney and William Grady Jones, occupants of the truck, and seized 413 gallons of nontaxpaid liquor which was loaded on the truck. About that time a car drove up into the yard of Roy Jones' house and in the car was the wife of Roy Jones with his children, and Mrs. Lois Willis, the sister of Mrs. Roy Jones and her children. Mrs. Roy Jones undertook to block the doorway to keep the officers from entering the dwelling house, telling the officers to wait until her husband, Roy Jones, returned. A twelve year old son of Roy Jones obtained a shotgun and while he did not point it at the officers, he held it at port arms in what the officers considered a threatening manner and the first entry into the residence was made by State Agent Hollingsworth to secure the shotgun and take it away from the child. Mrs. [fol. 117] Jones asked officer Woody Langford if he had a search warrant and Langford replied that he did not need one and the officers then searched the premises without a search warrant.

"The house had only two or three doors and there were five officers watching the residence and it would have been possible for the officers to watch each of the doors and still send another officer for a nighttime search warrant had the officers deemed this to be necessary.

"Upon a search of the premises, it was found that in a downstairs room of the house there was a complete distillery consisting in part of an upright boiler with a blower burner with which to heat it, and in the attic there was 2400 gallons of mash with hose pipes leading to the outside for the disposition of the spent mash. There were no signs posted showing it to be a registered distillery. It was fully setup and ready for operation and had been recently operated. A small quantity of nontaxpaid liquor was found in the residence also.

"The Court finds that the facts and circumstances within the knowledge of the officers were sufficient in themselves to warrant a man of reasonable caution in the belief that an offense was being committed and therefore the Court finds that probable cause for the search existed at the time the search was made.

### Conclusions of Law.

"Only unreasonable searches are proscribed by the Fourth Amendment. There is no precise formula for determining reasonableness. Every case must turn on its own facts and circumstances.  
[fol. 118] "If the officer has no warrant, he must show probable cause.

"Probable cause is reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the party is guilty of the offense with which he is charged: See *Dumbra v. United States*, 268 U.S. at page 441. The search here was not unreasonable and did not violate the Fourth Amendment because the officers had reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that Roy Jones was guilty of the offense of operating an illicit distillery in his home and this is true even though the officers had time to obtain a nighttime search warrant. See *United States v. Rabinowitz*, 339 U. S. 56 at page 66, overruling *Trupiano v. United States*, 334 U.S. 699, to the extent that the *Trupiano* case required a search warrant solely upon the basis of practicability of procuring rather than upon the unreasonableness of the search, stating that: 'The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable.'

### "Judgment.

"The motion to suppress is overruled and denied.

"This the 11 day of October, 1956.

"BOYDSLOAN,

"United States District Judge.

"Filed Oct. 11, 1956."

[fol. 119] IN UNITED STATES COURT OF APPEALS

No. 16396

ROY JONES,

v

UNITED STATES OF AMERICA.

JUDGMENT—June 10, 1957

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby affirmed.

[fol. 120] IN THE UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

Number 16,396

ROY JONES, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

PETITION FOR REHEARING—Filed June 25, 1957

Now comes appellant, Roy Jones, within twenty-one days after the affirmance of the judgment by this court, and petitions this court to grant him a rehearing on the following grounds:

— 1 —

The trial court misconstrued the ruling of the Supreme Court in the case of United States versus Rabinowitz, 339 U.S. 56, in determining that the practicability of procuring

a search warrant was no longer an element in determining the reasonableness of a search without a warrant, and this court has affirmed this principal (sic) of law erroneously.

— 2 —

[fol. 121] This court overlooked the trial court's findings of fact in this case to the effect that "The house had only two or three doors and there were five officers watching the residence and it would have been possible for the officers to watch each of the doors and still send another officer for a nighttime search warrant had the officers deemed this to be necessary."

— 3 —

This court overlooked, and so did the trial judge, the case of *Johnson v. United States*, 333 U.S. 10, wherein the Supreme Court, in passing upon a similar contention as to an unreasonable search and seizure without a warrant, held:

"No reason is offered for not obtaining a search warrant except the inconvenience to the officers and some slight delay necessary to prepare papers and present the evidence to a magistrate. These are never very convincing reasons and, in these circumstances, certainly are not enough to by pass the constitutional requirement. No suspect was fleeing or likely to take flight. The search was of permanent premises, not of a movable vehicle. No evidence or contraband was threatened with removal or destruction, except perhaps the fumes which we suppose in time will disappear."

— 4 —

This court overlooked the fact that the trial court misconstrued the case of *United States versus Rabinowitz*, 339 U.S. 56, in that the ruling of the *Rabinowitz* case turned upon the validity of a search of premises incidental to the execution of a valid warrant of arrest, whereas the ruling of the case at bar turned upon the search of a dwelling [fol. 122] house at night without a valid warrant to search or to arrest where sufficient time existed to take necessary steps to procure the necessary consent of a judicial officer.

— 5 —

This court has overlooked a prior decision of this same court in the case of *Clay v. United States*, 239 Fed. 2nd, 196, which is directly in point, holding that "availability of the safeguards afforded by an impartial, judicial magistrate is a factor bearing on reasonable, probable cause."

— 6 —

This court has overlooked the recent ruling of the Supreme Court in the case of *Kremen v. United States*, Decided May 13, 1957 (77 Supreme Court Reporter 828) Advance sheet dated June 1, 1957, wherein it was held; after reversing a Circuit Court of Appeals on writ of certiorari:

"The seizure of the entire contents of the house and its removal some 200 miles away to the F. B. I. offices for the purpose of examination are beyond the sanction of any of our cases."

— 7 —

This court overlooked the case of *Rent v. United States* (5th Circuit) 209 Fed. 2nd, 893, wherein this court has previously held that "one of the facts and circumstances to be considered in this case is the fact that there was no reason for not submitting to a magistrate the evidence which the officer deemed sufficient to justify a search of the automobile. The need for effective law enforcement is not satisfied as against the right of privacy by any necessity for the officer to take the decision into his own hands. The officer had ample opportunity to apply for a search warrant and in our opinion a search of the automobile [fol. 123] without a warrant was not justified."

— 8 —

This court overlooked the principle of law held in the case of *Johnson v. United States*, 333 U. S. 10, involving the search of a person's room without a warrant to arrest or search where sufficient time existed to procure a valid warrant from an impartial magistrate, and overlooked

the fact that the Rabinowitz case, *supra*, overruled the Trupiano case, 334 U. S. 699, "to the extent that Trupiano v. United States requires a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest."

— 9 —

Movant avers that the trial court in this case was in error in deciding in his conclusions of law that "If the officer has no warrant, he must show probable cause." Movant shows that under the law an officer must first have probable cause in order to procure a valid search warrant from a magistrate and if an officer could justify a search of a dwelling upon probable cause without a warrant there would never be any necessity for the issuance of a search warrant. In other words, movant contends that probable cause is a necessary element toward procuring a valid search warrant from a magistrate, and is never the substitute for the judicial determination.

— 10 —

This court overlooked the fact that in the findings of fact by the trial judge there is no finding that any of the occupants of the house were in the process of taking flight or attempting in any way to destroy any evidence so as to create any emergency requiring an immediate raid on [fol. 124] the appellant's home without first procuring the consent of an impartial, detached magistrate.

— 11 —

The court overlooked the trial judge's findings of fact that during the day of May 2nd, 1956, one of the officers had procured a daylight search warrant from the U. S. Commissioner in Gainesville, Georgia, and that they arrived back to the house to be searched during the daylight hours, but did not choose to execute the warrant at that time, but they waited until after dark to make the search. Movant avers that the failure to execute the warrant during the daylight hours rendered the nighttime

search void and illegal, and that this court has overlooked this fact in affirming the judgment of the trial court.

Wherefore, movant prays that a rehearing be granted, and that the judgment of the trial court be reversed.

/s/ Wesley R. Asinof, Attorney for Appellant (Movant), 419 Atlanta National Building, Atlanta, Georgia.

#### CERTIFICATE OF COUNSEL

I, Wesley R. Asinof, of counsel for Appellant, Roy Jones, do hereby certify that I have this day mailed three (3) copies of the foregoing petition for rehearing to Hon. James W. Dorsey, U. S. Attorney, care of Old Post Office Building, Atlanta, Georgia; and I do further certify that this petition for rehearing is presented in good faith and not for delay.

This 24th day of June, 1957.

/s/ Wesley R. Asinof

[fol. 125] IN UNITED STATES COURT OF APPEALS

(Title omitted)

MINUTE ENTRY OF ORDER DENYING REHEARING—July 3, 1957

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 126] IN UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

(Title omitted)

MOTION FOR STAY OF MANDATE—Filed July 12, 1957

Appellant, Roy Jones, now comes within ten (10) days from the date of the judgment of this Court denying his petition for rehearing and prior to the return of the man-



date to the trial court, and moves this court to order the Clerk thereof to stay the issuance of the mandate for a period of thirty (30) days and until the Supreme Court of the United States passes on the petition for certiorari to review this case, and appellant here and now in good faith avers that he does intend to apply to the Supreme Court of the United States for the writ of certiorari to review the judgment of this court in this case within the time provided for by the rules.

/s/ Wesley R. Asinof  
Attorney for Appellant

Certificate of Service (omitted in printing).

[fol. 127] IN UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

(Title omitted)

ORDER STAYING MANDATE—July 13, 1957

On Consideration of the Application of the Appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of sixty days from July 3, 1957; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within sixty days from July 3, 1957 there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of sixty days from July 3, 1957, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 13th day of July, 1957.

/s/ Richard T. Rives;  
United States Circuit Judge.

[fol. 128] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 129] SUPREME COURT OF THE UNITED STATES

No. 331, October Term, 1957

(Title omitted)

ORDER ALLOWING CERTIORARI—October 14, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.